

#9
IAP7 Rec'd PCT/PTO 26 JUL 2006

ATTORNEY DOCKET NO. 83950

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: **BIRD et al.**

Appln. No.: **10/523,153**

Filed: **January 27, 2005**

Title: **A BULK
COMMUNICATIONS
PROCESS USING MULTIPLE
DELIVERY MEDIA**

Group
Art Unit: **Not Yet Assigned**

Customer Number : **22242**

) Conf. Number : **8686**

)
)
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RECEIVED
22 AUG 2006
Legal Staff
International Division

RENEWED PETITION UNDER 37 C.F.R. §1.47(a)

Sir:

Responsive to Decision on Petition mailed on February 28, 2006, a petition for 3-months extension of time having been filed concurrently herewith along with the appropriate extension fee, Applicants respectfully submit an additional evidence to satisfy the factual prove that the non-signing joint inventors cannot be reached after diligent effort.

The above-identified US national phase application of PCT/AU2003/000954, was filed January 27, 2005, in the United States Patent and Trademark Office. The National phase application (U.S. Appln. No. 10/523,153) was filed in accordance with 35 U.S.C. §371, in which case the U.S. application is identical to the PCT application PCT/AU2003/000954. The subject application was filed with an unsigned Declaration and is subject to a Notification of Missing Requirements requiring an executed Declaration. Seven inventors are named on the present application. Five inventors have signed the Declaration

and two inventors, Kevin Bryan Levine and Michael Robert Stewart, refused to sign. On October 6, 2005, Applicants filed a Petition under 37 C.F.R. §1.47(a) to accept a Declaration signed by five inventors due to the refusal of the joint inventors Levine and Stewart to sign. The Petition was dismissed without prejudice as not satisfying a requirement of *a bona fide* attempt to present a copy of the application papers to the non-signing inventors, Kevin Bryan Levine and Michael Robert Stewart.

Enclosed herewith is a Statutory Declaration of Carl David Harrap, a registered Australian and New Zealand patent attorney to demonstrate that a bona fide attempt was made to present a copy of the application papers to the remaining inventors as explained in the attached Statutory Declaration. Mr. Harrap sent letters addressed to Mr. Stewart's and Mr. Levine's last known addresses, including copies of the above-identified application materials and the declaration to be signed.

The last known address of joint inventor Levin is:

Mr. Kevin Bryan Levine
36a Roe Street
North Bondi, NSW 2026 Australia

The last known address of joint inventor Stewart is:

Mr. Michael Robert Stewart
7 Foss Street
Glebe, NSW 2037 Australia

This Petition is accompanied by the following documents:

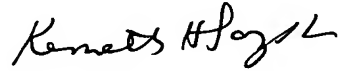
1. Statutory Declaration signed by Mr. Carl David Harrap., including copies of the Final Notices issued by the Australia Post stating that the Post was unable to deliver the letters to Mr. Stewart and Mr. Levine at their respective last known addresses; and
2. Declaration signed by five joint inventors, Nicholas R. Bird, Robert Silver, Alexander J. Omillian, Paul H. Ginns, and Michael Markham.

Applicants hereby request that the included Declaration signed by five joint inventors be accepted on behalf of all the inventors of the above-identified US application since the non-signing joint inventors cannot be reached after diligent effort.

The Commissioner is hereby authorized to charge any additional fees which may be required in this application under 37 C.F.R. §§1.16-1.17 during its entire pendency, or

credit any overpayment, to Deposit Account No. 06-1135. Should no proper payment be enclosed herewith, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1135.

Respectfully submitted,



Kenneth H. Samples
Reg. No. 25, 747

Date: 7/24/05

120 South LaSalle Street
Suite 1600
Chicago, Illinois 60603-3406
Telephone: (312) 577-7000
Facsimile: (312) 577-7007

**ANNEXES TO
PETITION UNDER
37 C.F.R. §1.47(a)**

In the matter of International Patent
application no. PCT/AU2003/000954

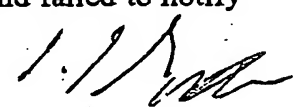
- and -

In the matter of United States Patent
application serial number 10/523,153

Statutory declaration

I, Carl David Harrap, a citizen of New Zealand, of 2/1 Wentworth Street, Manly, 2095, NSW, Australia do solemnly and sincerely declare as follows:

- 1 I am a registered Australian and New Zealand patent attorney at Freehills Patent & Trademark Attorneys (hereinafter "Freehills") and in that capacity I act for ConnXion Limited, an Australian company with a proprietary interest in international patent application number PCT/AU2003/000954 (hereinafter "the PCT application"), including an interest in the national entry of this application into the United States of America and elsewhere.
- 2 I requested from Iain Bartram, the Chief Financial Officer of ConnXion Limited the last known addresses of Michael Stewart and Kevin Levine, two of the inventors named in the PCT application. Iain Bartram responded by email on 30 June 2006 reporting that the last known addresses were for Kevin Levine 36a Roe Street, North Bondi, NSW 2026, and for Michael Stewart 7 Foss Street, Forest Lodge, NSW 2037.
- 3 On 5 July 2006 I sent letters addressed to Michael Stewart and Kevin Levine to these addresses together with a copy of the patent specification of the PCT application as published by the International Bureau as international publication number WO 2004/012109 A1 and a copy of the Declaration for Utility or Design Patent Application. I attach copies of the letters and the declarations as exhibits CDH1 and CDH2. The letters were sent by registered post with Australia Post.
- 4 I requested that Ryan Tucker, a fax room operator at Freehills monitor and follow up with Australia Post the progress of the delivery of the letters to Michael Stewart and Kevin Levine. Ryan Tucker has reported that Australia Post has been unable to deliver the letters. Consequent to this follow up, I have received by facsimile from Australia Post a copy of the "Final Notice" that Australia Post has said that it has delivered to 7 Foss Street, Forest Lodge and a copy of the "Final Notice" that Australia Post has said that it has delivered to 36A Roe Street, Bondi. These two notices are attached as exhibits CDH3 and CDH4.
- 5 After receiving notification of the last known addresses from ConnXion, I examined an online Australian telephone database (www.whitepages.com.au) for any listing of a Stewart in Foss Street. This revealed a C M Stewart at 5 Foss Street, Forest Lodge. I called the number listed to satisfy myself that this was not the address of Michael Stewart and the woman who responded said that there was no Michael Stewart at that address. The online database did not reveal any listing for a Levine in Roe Street.
- 6 I believe that a reasonable effort has been made to present both Michael Stewart and Kevin Levine with the declaration and specification of the PCT application. It appears that Michael Stewart and Kevin Levine have moved on from their previous addresses and failed to notify ConnXion Limited of this move.



7 I hereby declare that all statements made herein of my own knowledge are true, and that all statements made herein on information and belief are believed to be true; and further that these statements were made with the knowledge that wilful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such wilful false statements may jeopardise the validity or enforceability of the application or any patent issued thereon.

And I make this solemn declaration by virtue of the Australian Statutory Declarations Act 1959 and subject to the penalties provided by that Act for the making of false statements in statutory declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

Declared at Sydney
this 24th
day of July
2006, before me:

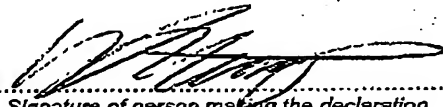


Signature of person before whom the declaration is made

PAUL SAVAGE

Solicitor, NSW, Australia

Title of person before whom the declaration is made



Signature of person making the declaration

CARL DAVID HARRAP

Full name of declarant

In the matter of International patent
application no. PCT/AU2003/000954

- and -

In the matter of United States patent
application serial number 10/523,153

EXHIBIT

The attached is Exhibit CDH1 referred to in the Statutory Declaration of Carl David Harrap declared on the 24th day of July 2006.

Before me:



.....
Signature of person before whom the declaration is made

Solicitor

.....
Title of person before whom the declaration is made

Freehills

Patent & Trade Mark Attorneys

5 July 2006

Our ref S80925442-PAS:CDH:hg
Phone (02) 9225 5004
Email carl.harrap@freehills.com

Doc no Sydney\005098877

Mr Michael Stewart
7 Foss Street
FOREST LODGE NSW 2037

By registered post

Dear Mr Stewart

Trade Wind Communications Ltd
United States patent application no 10/523153
Corresponding to International patent application no.
PCT/AU2003/000954
A bulk communications process using multiple delivery media

We act for Trade Wind Communications Ltd in relation to this United States patent application no 10/523153.

We enclose a copy of the international application no. PCT/AU2003/000954 (publication no. WO/2004/012109) as published, which served as the basis for this United States patent application. Please review this document carefully. You will see from the front page of the specification that you are listed as one of the inventors.

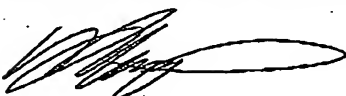
One of the requirements of the United States Patent and Trade Marks Office for patent applications is to lodge a declaration signed by each inventor. We understand that you have been previously presented with the declaration and requested to sign the declaration. Please read the declaration carefully together with the enclosed international patent application and if all the statements in the declaration are true sign the declaration where indicated on page 3 and return it to us. We enclose a return courier envelope for this purpose.

If for any reason you do not agree with all the statements in the declaration or cannot sign the declaration for some other reason, please contact us with your reasons.

Please contact us if you have any questions regarding our request.

Yours sincerely

Freehills Patent & Trade Mark Attorneys



Carl Harrap
Senior Associate

Formerly Freehills Carter Smith Beadle Associated with Freehills
MLC Centre Martin Place Sydney NSW 2000 Australia Telephone 61 2 9225 5777 Facsimile 61 2 9322 4000
GPO Box 4227 Sydney NSW 2001 Australia www.freehills.com/patentsandtrademarks
Offices in MELBOURNE SYDNEY BRISBANE Registered Patent & Trade Mark Attorneys in Australia & New Zealand

In the matter of International patent
application no. PCT/AU2003/000954

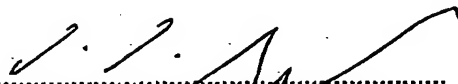
- and -

In the matter of United States patent
application serial number 10/523,153

EXHIBIT

The attached is Exhibit CDH2 referred to in the Statutory Declaration of Carl David Harrap declared on the 24th day of July 2006.

Before me:



.....
Signature of person before whom the declaration is made

Solicitor

.....
Title of person before whom the declaration is made

Freehills

Patent & Trade Mark Attorneys

5 July 2006

Our ref S80925442:PAS:CDH:hg
Phone (02) 9225 5004
Email carl.harrap@freehills.com

Doc no Sydney\005098877

Mr Kevin Levine
36a Roe Street
NORTH BONDI NSW 2026

By registered post

Dear Mr Levine

Trade Wind Communications Ltd
United States patent application no 10/523153
Corresponding to International patent application no.
PCT/AU2003/000954
A bulk communications process using multiple delivery media

We act for Trade Wind Communications Ltd in relation to this United States patent application no 10/523153.

We enclose a copy of the international application no. PCT/AU2003/000954 (publication no. WO/2004/012109) as published, which served as the basis for this United States patent application. Please review this document carefully. You will see from the front page of the specification that you are listed as one of the inventors.

One of the requirements of the United States Patent and Trade Marks Office for patent applications is to lodge a declaration signed by each inventor. We understand that you have been previously presented with the declaration and requested to sign the declaration. Please read the declaration carefully together with the enclosed international patent application and if all the statements in the declaration are true sign the declaration where indicated on page 3 and return it to us. We enclose a return courier envelope for this purpose.

If for any reason you do not agree with all the statements in the declaration or cannot sign the declaration for some other reason, please contact us with your reasons.

Please contact us if you have any questions regarding our request.

Yours sincerely
Freehills Patent & Trade Mark Attorneys



Carl Harrap
Senior Associate

Formerly Freehills Carter Smith Beadle Associated with Freehills
MLC Centre Martin Place Sydney NSW 2000 Australia Telephone 61 2 9225 5777 Facsimile 61 2 9322 4000
GPO Box 4227 Sydney NSW 2001 Australia www.freehills.com/patentsandtrademarks
Offices in MELBOURNE SYDNEY BRISBANE Registered Patent & Trade Mark Attorneys in Australia & New Zealand

In the matter of International patent
application no. PCT/AU2003/000954

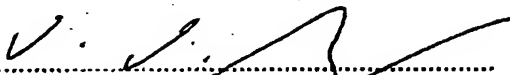
- and -

In the matter of United States patent
application serial number 10/523,153

EXHIBIT

The attached is Exhibit CDH3 referred to in the Statutory Declaration of Carl David Harrap
declared on the 24th day of July 2006.

Before me:



.....
Signature of person before whom the declaration is made

Solicitor

.....
Title of person before whom the declaration is made

ATT

RYAN TUCKER

24 JUL 2006
CUSTOMER SERVICE

Postal Article Awaiting Collection POST

Date 24/7/06 Tick appropriate box ☐ 1st Notice ☒ Final Notice

Name Michael Stewart

Address 7 Foss St

Suburb/Town Forest Lodge Postcode 2037

The article indicated on the reverse of this card can be collected after
☐ 9.00am ☐ 12.00pm ☒ 2.00pm ☐ 4.00pm today
from the Post Office/Mail Centre located at Glebe 2037

ARTICLE WILL BE RETURNED TO SENDER IF NOT CLAIMED IN 5 WORKING DAYS FROM THIS NOTICE

or phone: to make alternative collection or delivery arrangements.

☒ Personal signature of addressee required
☐ Signature of addressee or agent required (see over)

IMPORTANT: The article will be held for a limited period. If you cannot collect it or arrange collection within 5 working days the article may be returned to the sender.

This card must be presented at the time of collection and current Proof of Identity will be required.

651766 - Dec 04

RL 5154711

In the matter of International patent
application no. PCT/AU2003/000954


- and -

In the matter of United States patent
application serial number 10/523,153

EXHIBIT

The attached is Exhibit CDH4 referred to in the Statutory Declaration of Carl David Harrap
declared on the 24th day of July 2006.

Before me:


.....
Signature of person before whom the declaration is made

Solicitor
.....
Title of person before whom the declaration is made

ATTN RYAN TUCKER.

24 JUL 2006
CUSTOMER SERVICE

RL 5154710

Postal Article Awaiting Collection: **OPPOST**
Date: 24 JUL 01
Tick on: **Final Notice**

Name: Kevin Lennie
Address: 36A ROE ST
Surname/Room: Bondi
Postcode: 2026

This article indicated on the reverse of this card can be collected after:

☐ 9.00am ☐ 12.00pm ☐ 2.00pm ☐ 4.00pm today
from the Post Office/Mail Centre located at:

BONDI BEACH 2026

or phone: during office hours
to make alternative collection or delivery arrangements.

☐ Personal signature of addressee required
☐ Signed and addressed as agent required (see over)

IMPORTANT: This article will be held for a limited period. If you cannot collect it or arrange collection within 5 working days this article may be returned to the sender.

This card must be presented at the time of collection and current Proof of Identity will be required.

10/11/01 - beta